

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DORIS HORN AND J. W. HENDERSON, ET AL.))	
)	
COMPLAINANTS)	
)	
VS.)	CASE NO.
)	91-032
ESTILL COUNTY WATER DISTRICT NO. 1)	
ARCHIE MCINTOSH, DAN ROSE, JAMES SONS)	
)	
DEFENDANTS)	

O R D E R

This matter arising upon motion of the Complainants, Doris F. Horn and J. W. Henderson, to temporarily enjoin the Estill County Water District No. 1 ("Water District") from constructing a proposed sewage system pending a final decision in this proceeding on the grounds that construction of the sewage system would cause the property owners in the Water District irreparable harm, and it appearing to this Commission as follows:

This action arises out of several complaints filed by residents and customers of the Water District. The complaining parties have raised several issues; one of which is their opposition to a proposed sewage system which was earlier approved by this Commission on July 19, 1991 in Case No. 91-216.¹ As part

¹ Case No. 91-216, The Application of Estill County Water District No. 1 of Estill County, Kentucky, for a Certificate of Public Convenience and Necessity, to Construct, Finance and Increase Rates.

of their complaint, the complaining parties have requested that the Commission withdraw its authorization of the sewage project. The purpose of this motion, which was filed at the conclusion of the Complainants' evidence, is to temporarily enjoin the Water District from proceeding with the project until all the evidence has been presented and the Commission can make a final ruling.

The Commission, as an administrative agency, derives its authority solely from the legislature. While KRS Chapter 278 empowers the Commission to regulate public utilities, as defined in KRS 278.010(3), it does not confer upon the Commission injunctive authority. The Commission may only direct a utility within its jurisdiction to cease an activity which the Commission finds to be improper and to desist from engaging in that activity in the future. It is fundamental though that such an Order must be based upon evidence that the action being taken by the utility is unlawful.

Other than alleging irreparable harm, the motion filed by the Complainants does not specify the facts or evidence upon which they rely as the basis for their motion. Nevertheless, during the course of the hearing conducted on October 7, 1991 and November 1, 1991, the Complainants elicited testimony from the water commissioners, including the chairman, the county judge and others relating to the sewage project and the authority of the commissioners to adopt it.

With regard to the proposed sewage project, evidence was presented that when the project was first approved by the Water District, there was opposition from customers and residents of the

Water District. There was also evidence that a similar project had been constructed by the city of Sadieville in Scott County and that some of the customers of that system were not satisfied with service they were receiving.

As noted above, the sewage project adopted by the Water District was approved by this Commission in Case No. 91-216. Notice of that proceeding was given to customers of the Water District on June 27, 1991 in the Citizen Voice and Times, a newspaper of general circulation in Estill County. Neither the Complainants nor any other resident or customer of the Water District appeared in opposition to the project at that time nor is there any evidence that the Water District, in adopting the project, exceeded its authority or otherwise acted unlawfully or improperly.

The complaining parties also seemed to suggest from their evidence that the commissioners of the Water District did not have authority to adopt the project or otherwise act on behalf of the Water District, because their terms had expired. However, it is the rule in this state that, in the absence of a provision to the contrary, elected or appointed officers remain in office at the expiration of their terms, and are entitled to exercise the powers of their office, until their successors are appointed and qualified. Booth v. Board of Education of the City of Owensboro, 191 Ky. 147, 229 S.W. 84, 88 (1921). Since the evidence presented clearly shows the present water commissioners were duly appointed in accordance with the statutes, and even though their terms have expired and no successors have been appointed to replace them,

they are entitled to continue to act as water commissioners until they are replaced or unless they are removed.

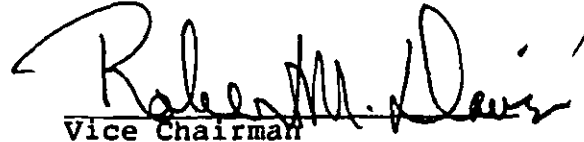
This Commission being otherwise sufficiently advised,

IT IS ORDERED that the motion to temporarily enjoin the Water District from constructing the proposed sewage project be and is hereby denied.

Done at Frankfort, Kentucky, this 6th day of December, 1991.

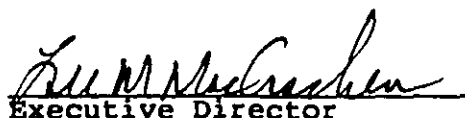
PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman

Commissioner

ATTEST:


Executive Director